IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE NO.1327 OF 1998
IN
RECOVERY CERTI.APPLN NO.960 OF 1994

The Kapol Coop Bank Ltd .. Applicant

vs

1. M/s Bhalchandra Enterprises
2. Shri Suryakant J.Bhansali
3. ShriAshit S.Bhansali
4. ShriRoshan S.Bhansali
5. ShriDhanesh Narbheram Bhansali
6. Smt Nalini S.Bhansali

.. Respondents

Mr.K.M.Sangani for Applicant

Mr.R.Sarathy i/b Mr.M.M.Patel for Respondents

CORAM : SMT R.S.DALVI, J

DATE : 28th February, 2007

P.C.

1. This notice has been taken out since 1998 under the provisions of Order 21 Rule 37 of C.P.C. requiring the respondents against whom the notice is addressed to show cause why he should not be committed to jail/civil prison in execution of the decree under the recovery certificate Application No.960 of 1994. The Notice was served upon the defendants informing them of various dates of hearing by separate letters of the plaintiff's advocates. An affidavit of service has been filed on 21st April, 2005. The respondent no.3 has filed his affidavit in reply.

2. The respondents are required to appear in person in the notice under Order 21 Rule 37 of C.P.C. Only respondent No. 3 has appeared. Respondent no. 1

is stated to be 82 years old. Respondent no.4 who is 45 years old is stated to be having back pain and hence respondent no. 3 has not appeared before the court despite specific notice in that behalf and despite court's directions when the matter appeared on board but, was adjourned.

3. It is the case of the plaintiff that though the respondents have a number of properties and carry on business, they have failed and neglected to discharge the debt in full. One of the properties of the respondents has been sold. The sale proceeds have been appropriated partly towards the discharge of the above recovery certificate and fully towards discharge of another debt of the sister concern of respondent no. 1.

4. The respondents have not made any appropriation for payment to be made to the applicant. The applicants as the creditors, have appropriated the payments received as stated above. Advocate for the applicants has shown the statement of the bank discharging in full and in part two debts of the two sister concerns. Rs.65,00,000/- is yet due and payable by the respondent nos. 1 to 4 to the applicant.

5. The affidavit in reply of the respondents shows 3 immovable properties. The first immovable properties is flat No.557/E at Asha Mahal, at Peddar Road, Mumbai. Another mortgage is created in respect of the said flat. Another bank namely Vasant Sahakari Bank Ltd has made an application to be paid off from the sale proceeds of that property. The execution is in progress. The property is not capable of discharging both the debts in full.

6. The 2nd property shown by the respondents is Flat No.24 on 2nd floor of Sunshine Building at Beach Candy, Mumbai. The respondents offers the said property for sale. Advocate for the bank has shown the registered agreement for transfer executed by respondent no. 3 in respect of the said flat in favour of one Prakash Kirtikumar Salot. Advocate for the said purchaser has written a letter dated 20th December, 2005 to the applicant 's bank Manager informing them of the sale deed registered under No.BBF-1-01044-2005 attaching copy of the sale deed and requesting the bank to exempt the said property from recovery. Despite this, Advocate for the respondent no. 3, on instructions of respondent no. 3 who is present before the Court, makes an offer to sell that flat. Advocate as well as respondent no. 3 has been directed to make that offer in writing.

Respondent no. 3 has offered in writing the said property for sale today. The writing is taken on record and marked A. It is seen that the act of the respondents is not only insolent but, contemptuous. A registered transfer deed has been executed for this property. Yet respondent no. 3 has made bold to offer the property in satisfaction of the execution of the recovery certificate.

7. The third property shown in the affidavit in reply of the respondent no. 3 is a premises on the 2nd floor of New Prabhat Coop Society Ltd, at Ranade Road, Dadar, Mumbai. The respondents' Advocate states that its value is about Rs.25,00,000/-. That property alone also is not sufficient to satisfy the recovery certificate.

8. The respondents continue to carry on their business. Respondent nos. 2 and 4 have impertinently not come to Court in answer the notice. It is seen that despite having the means to pay, the respondents have not paid amounts in satisfaction of the Recovery Certificate.

9. Notice No.1327 of 1998 is therefore, made absolute as prayed. Respondent no. 3 who is present in Court shall be taken in custody. The

Sheriff of Mumbai shall issue a warrant for arrest and production of respondent no.4. Respondent no. 2 who is at present 82 years old is exempt from notice.

10. Respondent no. 3, and upon arrest respondent no. 4, are sentenced to suffer imprisonment for a period of 3 months. The plaintiffs shall pay the subsistence allowance for the subsistence of respondent nos. 3 and 4 as called upon by the Dy.Sheriff of Mumbai.

This order is not stayed.

(Smt R.S.Dalvi,J)